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10 Attorneys for Plaintiff and Counter-Defendant
ALL NIPPON AIRWAYS COMPANY, LTD.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 ALL NIPPON AIRWAYS COMPANY,) Case No. C 07 3422 EDL
14 LTD.,

15 Plaintiff,

16 vs.

17 UNITED AIR LINES, INC.,

18 Defendant.

19 UNITED AIR LINES, INC.,

20 Counter-Plaintiff,

21 vs.

22 ALL NIPPON AIRWAYS COMPANY,) LTD.,

23 Counter-Defendant.
24

**ANSWER AND AFFIRMATIVE
DEFENSES OF ALL NIPPON
AIRWAYS COMPANY, LTD. TO
UNITED AIR LINE, INC.'S FIRST
AMENDED COUNTER-
COMPLAINT**

25 Plaintiff and Counter-Defendant, ALL NIPPON AIRWAYS COMPANY,
26 LTD. (hereinafter "ANA"), by its attorneys, Condon & Forsyth LLP, hereby
27

1 answers Defendant and Counter-Plaintiff UNITED AIR LINES, INC.'S ("UAL")
2 First Amended Counter-Complaint as follows:

3
4 **THE PARTIES**

5 1. ANA denies the allegations in paragraph 1 of the First Amended
6 Counter-Complaint.

7 2. ANA admits the allegations in paragraph 2 of the First Amended
8 Counter-Complaint.

9
10 **JURISDICTION**

11
12 3. ANA admits the allegations in paragraph 3 of the First Amended
13 Counter-Complaint, except ANA denies that damages sustained by UAL exceed
14 \$700,000.00.

15
16 **INTRADISTRICT ASSIGNMENT**

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18 4. ANA admits the allegations in paragraph 4 of the First Amended
19 Counter-Complaint.

20
21 **GENERAL ALLEGATIONS**

22
23 5. ANA admits the allegations in paragraph 5 of the First Amended
24 Counter-Complaint to the extent that on October 7, 2003 at San Francisco
25 International Airport, San Francisco, California, an ANA Boeing B777 aircraft
26 (Reg. No. JA709A) designated as ANA's Flight NH007 ("NH007") was involved
27

1 in a collision on the ground with a UAL Boeing B777 aircraft (Reg. No. N222UA)
2 designated as UAL's Flight UA809 ("UA809"). Except as expressly admitted,
3 ANA denies the allegations contained in paragraph 5 of the First Amended
4 Counter-Complaint.

5 6. ANA denies the allegations in paragraph 6 of the First Amended
6 Counter-Complaint.

7 7. ANA admits the allegations in paragraph 7 of the First Amended
8 Counter-Complaint.

9
10 **AS TO COUNT ONE AGAINST ANA**
11

12 8. ANA repeats, reiterates and realleges each and every allegation,
13 admission and denial to paragraphs 1 through 7, inclusive, of the First Amended
14 Counter-Complaint with the same force and effect as if herein set forth in full.

15 9. The allegations in paragraph 9 of the First Amended Counter-
16 Complaint constitute a legal assertion and need not be specifically admitted or
17 denied by ANA, but ANA denies that it breached any legal duty owed.

18 10. ANA denies the allegations in paragraph 10 of the First Amended
19 Counter-Complaint.

20 11. ANA denies the allegations in paragraph 11 of the First Amended
21 Counter-Complaint.

22 12. ANA denies the allegations in paragraph 12 of the First Amended
23 Counter-Complaint.

24 13. ANA denies the allegations in paragraph 13 of the First Amended
25 Counter-Complaint.

AS TO COUNT TWO AGAINST ANA

14. ANA repeats, reiterates and realleges each and every allegation, admission and denial to paragraphs 1 through 13, inclusive, of the First Amended Counter-Complaint with the same force and effect as if herein set forth in full.

15. ANA denies the allegations in paragraph 15 of the First Amended Counter-Complaint.

16. ANA denies the allegations in paragraph 16 of the First Amended Counter-Complaint.

17. The allegations in paragraph 17 of the First Amended Counter-Complaint constitute a legal assertion and need not be specifically admitted or denied by ANA.

18. The allegations in paragraph 18 of the First Amended Counter-Complaint constitute a legal assertion and need not be specifically admitted or denied by ANA.

19. ANA denies the allegations in paragraph 19 of the First Amended Counter-Complaint.

20. ANA denies the allegations in paragraph 20 of the First Amended Counter-Complaint.

AS TO COUNT THREE AGAINST ANA

21. ANA repeats, reiterates and realleges each and every allegation, admission and denial to paragraphs 1 through 20, inclusive, of the First Amended Counter-Complaint with the same force and effect as if herein set forth in full.

22. ANA admits the allegations in paragraph 22 of the First Amended

1 Counter-Complaint to the extent that ANA and UAL executed Annex B.1.3, which
2 speaks for itself.

3 23. Annex B.1.3 executed by ANA and UAL speaks for itself and the
4 allegations in paragraph 23 of the First Amended Counter-Complaint need not be
5 specifically admitted or denied by ANA.

6 24. Annex B.1.3 executed by ANA and UAL speaks for itself and the
7 allegations in paragraph 24 of the First Amended Counter-Complaint need not be
8 specifically admitted or denied by ANA.

9 25. ANA denies knowledge or information sufficient to form a belief as to
10 the truth of the allegations in paragraph 25 of the First Amended Counter-
11 Complaint.

12 26. ANA denies the allegations in paragraph 26 of the First Amended
13 Counter-Complaint.

14 27. ANA denies the allegations in paragraph 27 of the First Amended
15 Counter-Complaint.

16 28. ANA denies the allegations in paragraph 28 of the First Amended
17 Counter-Complaint.

18 **AS TO COUNT FOUR AGAINST ANA**

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20 29. ANA repeats, reiterates and realleges each and every allegation,
21 admission and denial to paragraphs 1 through 28, inclusive, of the First Amended
22 Counter-Complaint with the same force and effect as if herein set forth in full.

23 30. ANA denies the allegations in paragraph 30 of the First Amended
24 Counter-Complaint.

25 31. Annex B.1.3 executed by ANA and UAL speaks for itself and the
26 allegations in paragraph 31 of the First Amended Counter-Complaint need not be
27

1 specifically admitted or denied by ANA.

2 32. Annex B.1.3 executed by ANA and UAL speaks for itself and the
3 allegations in paragraph 32 of the First Amended Counter-Complaint need not be
4 specifically admitted or denied by ANA.

5 33. ANA denies the allegations in paragraph 33 of the First Amended
6 Counter-Complaint.

7 34. The allegation in paragraph 34 of the First Amended Counter-
8 Complaint constitutes a legal assertion and need not be specifically admitted or
9 denied by ANA, but it is denied.

10 35. ANA denies the allegations in paragraph 35 of the First Amended
11 Counter-Complaint.

12 **FIRST AFFIRMATIVE DEFENSE**
13 **TO EACH AND EVERY CAUSE OF ACTION**

14 36. UAL's First Amended Counter-Complaint fails to state a claim
15 against ANA upon which relief can be granted.

16
17 **SECOND AFFIRMATIVE DEFENSE**
18 **TO EACH AND EVERY CAUSE OF ACTION**

19 37. Any injury, damage, or loss sustained by UAL, if such occurred, was
20 proximately caused and contributed to by UAL'S own negligence or culpable
21 conduct. Accordingly, ANA is not liable to UAL or, alternatively, UAL's
22 recovery, if any, should be reduced by the amount of negligence attributable to the
23 conduct of UAL.

**THIRD AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION**

38. The incident alleged in the First Amended Counter-Complaint, and the damages UAL alleges it sustained as a result of the incident, were due to the negligence or other wrongful acts or omissions of other parties, their agents or employees, or by others unknown at this time over whom defendant ANA had no control at any time relevant hereto; however, in the event that a finding is made that negligence exists on the part of ANA, which proximately contributed to UAL's damages alleged in the First Amended Counter-Complaint, ANA's liability, if any, should be reduced by an amount proportionate to the amount by which the comparative negligence of such other persons or entities contributed to the happening of the alleged incident and damages upon which plaintiff seeks recovery.

**FOURTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION**

39. UAL's damages, if any, are due to the acts or omissions of persons or entities other than ANA; however, in the event a finding is made that liability exists on the part of ANA, which liability is expressly denied, ANA is entitled to indemnity and/or contribution from such persons or entities in direct proportion to their respective fault.

**FIFTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CAUSE OF ACTION**

40. The injuries and damages allegedly suffered by UAL were caused by intervening and superceding causes, not caused by ANA.

41. UAL failed to exercise reasonable care and diligence to mitigate its alleged damages, if any, and on this ground UAL is barred from asserting its claims against ANA.

42. If any damages are awarded to UAL, ANA is entitled to a reduction for all amounts paid or available from all collateral sources.

43. UAL's violation of federally enacted regulations, including but not limited to the Federal Aviation Regulations, defeats UAL's claims in whole or in part.

44. UAL's damages, if any, are barred by the applicable statute of limitations.

45. ANA intends to rely upon such other affirmative defenses as become discovered through discovery and up to the date of trial and reserves the right to modify the foregoing affirmative defenses if necessary.


WHEREFORE, ANA prays as follows:

1. That UAL take nothing by reason of UAL's First Amended Counter-Complaint herein and for judgment in favor of ANA; and

2. For such relief as the Court may deem just and proper.

Dated: November 15, 2007

CONDON & FORSYTH LLP

By: 
MARSHALL S. TURNER (*pro hac vice*)
SCOTT D. CUNNINGHAM

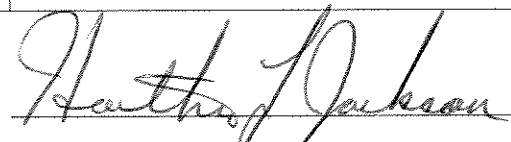
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CERTIFICATE OF SERVICEALL NIPPON AIRWAYS' ANSWER AND AFFIRMATIVE DEFENSES OF
ALL NIPPON AIRWAYS COMPANY, LTD. TO UNITED AIR LINES, INC.'S
FIRST AMENDED COUNTER-COMPLAINT

I, hereby certify that on November 15, 2007 I electronically filed the foregoing paper with the Clerk of the Court using the ECF System which will send notification of such filing to the following:

Scott R. Torpey, Esq. Jaffe, Raitt, Heuer & Weiss 2777 Franklin Road, Suite 2500 Southfield, MI 48034-8214 Phone: (248) 727-1461 Fax: (248) 351-3082	Attorneys for defendant
Jeffrey A. Worthe, Esq. Worthe, Hanson & Worthe The Xerox Centre 1851 East First Street, Ninth Floor Santa Ana, CA 92705	Attorneys for defendant


 HEATHER L. JACKSON

Sworn to before me this
 15th day of November, 2007


 Notary Public

TINA M. ZOCCALI
 Notary Public, State of New York
 No. 01ZO6059025
 Qualified in Rockland County
 Commission Expires May 21, 20 11

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